IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.1579 OF 1992.

Shri G.R.Balkrishna : Petitioner

versus

Smt.Bhagirathi Hari Nakhwa
since deceased by her LRs :-
Jaywant Hari Nakhwa & ors. : Respondents.

Mr.A.A.Garge i/by Mr.R.S.Apte for the petitioner.
Ms.Nayana Thatee h/f Mr.S.M.Oak for Respondent Nos.1(1) to 1(5) and 2.

CORAM : D.G.DESHPANDE, J.

DATED : October 07, 2006.

ORAL ORDER

1. This writ petition is filed by the original tenant. Landlord filed a suit against

him for eviction of the tenanted premises on the ground of habitual default. The said suit was decreed by the trial Court. The tenant preferred an appeal. That was allowed and the suit filed by the landlord was dismissed. The landlord filed a Review Petition. That was also dismissed. Thereafter in 1991 the landlord or landlady filed a petition in this Court vide Writ Petition No.5366 of 1991, because the orders of the District Judge in the appeal as well as in the Review Petition were against the landlord. One year thereafter i.e. in 1992 the tenant filed present Writ Petition No.1579 of 1992 challenging certain findings or observations of the District Judge in the main appeal though the ultimate order of the District Judge was in favour of the tenant.

2. When the Writ Petition filed by the landlord being Writ Petition No.5366 of 1991 came up before the Single Judge of this Court for final hearing, at that time both the advocates for the landlord were heard and a reasoned order and judgment came to be delivered by Justice Karnik on 9th August 2004 allowing the petition of the landlord and making the rule absolute.

3. Now the tenant is obviously aware of this order because his advocate was heard at that time in that petition. Now Mr.Garge, the advocate for the tenant, wants to contend that the landlord's petition i.e. Writ Petition No.5366 of 1991 has been allowed after hearing the advocates for the landlord and tenant, he should be separately and independently heard in this petition i.e in Writ Petition No.1579 of 1992.

4. This prayer cannot be simply allowed because I cannot decide the issue that has already been decided and concluded by another bench of this Court in Writ Petition No.5366 of 1991 where both the advocates for the landlord and tenant were heard. Suppose I hear this petition and come to a different conclusion, then that will amount to give different order in a situation if so requires and, that cannot have been simply done. Therefore now this petition has become infructuous.

5. The advocate for the tenant Mr.Garge contends that this petition should have been

clubbed together as per the directions given earlier and it should have been heard and decided when the Writ Petition No.5366 of 1991 was heard and decided. Even this argument cannot be accepted, because the order dated 9th August 2004 passed by Justice Karnik does not show that does not show that advocate Mr.Garge had made any such request to the said bench. Secondly, it is also very doubtful, whether this petition is independently maintainable, because the order of District Judge has ultimately given in favour of the tenant. Merely challenging his findings and observations is also doubtful. The tenant can not do so. Therefore on all these counts, the petition has to be dismissed as become infructuous and it is accordingly dismissed as become infructuous. Rule is discharged. Interim order, if any, stands vacated.

[D.G.DESHPANDE, J.]